

Exhibit B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
TOWN SPORTS INTERNATIONAL, LLC, Case No. 20-12168 (CSS)
et al.,
Courtroom No. 6
824 Market Street
Wilmington, Delaware 19801
Debtors. April 20, 2021
. 10:00 A.M.

TRANSCRIPT OF TELEPHONIC HEARING REGARDING MOTION TO ENFORCE
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Post Effective Date Debtors: Robert S. Brady, Esquire
Sean T. Greecher, Esquire
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1 TELEPHONIC APPEARANCES (continued):

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4 919 North Market Street
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6 - and -

7 Massimo D'Angelo, Esquire
8 Mark Lichtenstein, Esquire
9 AKERMAN LLP
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11 37th Floor
12 New York, New York 10020

13 For the New York Christopher McCall, Esquire
14 Attorney General: OFFICE OF THE NEW YORK STATE
15 ATTORNEY GENERAL
16 28 Liberty Street
17 New York, New York 10005

18 For New TSI Holdings: Jeffrey Chubak, Esquire
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21 New York, New York 10001
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25

MATTERS GOING FORWARD:

2. Motion of Town Sports International Holdings, Inc. for Entry of an Order Enforcing the Terms of the Chapter 11 Plan Releases and Injunction [Docket No. 987, 3/10/21]

Ruling: 32

3. Motion of Town Sports International Holdings, Inc. to Enforce Sale Order and Compel Turnover of Documents [Docket No. 1018, 4/6/21]

Ruling: Matter Taken Under Advisement

DEBTORS' WITNESS(s):**PATRICK WALSH**

Direct Examination through Declaration

Cross Examination by Mr. McCall 10

Redirect Examination by Mr. Sullivan 19

<u>EXHIBITS:</u>	<u>ID</u>	<u>Rec'd</u>
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Declaration of Patrick Walsh		8
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Declaration of Christopher McCall:

Admitted/Striking Paragraph 16		23
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McCall Declaration Exhibits 1-26		23
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1 (Proceedings commenced at 10:01 a.m.)

2 THE COURT: Good morning, everyone. This is Judge
3 Sontchi. We're here in the Town Sports International case;
4 20-12168.

5 We have a couple of contested matters that appear
6 on the agenda today. I will turn it over to Mr. Greecher, I
7 think, for the post-effective date debtors, to go through the
8 agenda.

9 MR. GREECHER: Thank you, Your Honor. For the
10 record Sean Greecher for the post effective date debtors, the
11 plan administrative for the post effective date debtors.

12 As you mentioned, there are two matters that are
13 contested and scheduled to go forward today on the agenda.
14 They were filed by Town Sports International Holdings which
15 is represented by Mr. Sullivan. So I will turn it over to
16 him to proceed with the contested matters.

17 THE COURT: Thank you, Mr. Greecher.
18 Mr. Sullivan?

19 MR. SULLIVAN: Good morning, Your Honor. Bill
20 Sullivan from Sullivan Hazeltine Allinson on behalf of Town
21 Sports International Holdings, Inc.

22 Your Honor, during the presentation today, to
23 avoid confusion, I will generally refer to Town Sports
24 International Holdings as either Holdings or TSIH.

25 Your Honor, appearing with me is co-counsel from

1 the Akerman Firm, specifically Massimo D'Angelo and Mark
2 Lichtenstein. Your Honor, we submitted motions that they be
3 admitted *pro hac vice* in this matter. I don't know if those
4 have been granted, but they are on file.

5 THE COURT: I don't know if they're granted either
6 because I don't touch those, but I'm certainly happy to hear
7 them today.

8 MR. SULLIVAN: Okay. Thank you, Your Honor.

9 Your Honor, there are two motions on the agenda
10 for today. Mr. Lichtenstein is going to handle the turnover
11 of the books and records motion. I am going to handle, in
12 the main, the motion to enforce the plan release and
13 injunction motion which is item number two on the agenda.

14 Mr. D'Angelo would be available in connection with
15 that motion to address any questions regarding the New York
16 State Court action, but we would propose to proceed, first,
17 with the motion to enforce that was filed first.

18 THE COURT: Okay.

19 MR. SULLIVAN: Your Honor, the motion to enforce
20 was filed on March 10th and it was filed a week after the
21 order at issue was entered by the New York State Court on
22 March 3rd. With respect to the motion to enforce the court
23 granted shortened notice, which we appreciated. The hearing
24 date that was given was not convenient for a counsel from the
25 Attorney General's Office. The parties negotiated a

1 standstill agreement until today along with a briefing
2 schedule.

3 Your Honor, I'd like to provide a brief
4 introduction to the motion before we turn to the
5 declarations. Your Honor, the motion to enforce seeks to
6 enforce the plan release and injunction provisions with
7 respect to what is labeled as a judgment and consent order
8 entered in New York State Court on March 3rd.

9 The debtor, Town Sports International LLC and TSIH
10 or Holdings are both defendants identified as approving the
11 consent order, but the stipulation on which it is based was
12 never presented to Holdings and Holdings never consented to
13 its submission to the court.

14 The reason that Holdings objects to the settlement
15 and to it being submitted to the court is it would permit the
16 New York Attorney General's Office to liquidate a bond that
17 Holdings had posted as required by New York Law with respect
18 to sports clubs. And the amount of that bond is \$250,000.
19 Those proceeds will be used to satisfy claims for refunds
20 from members of the approximately 186 sports clubs that were
21 operated by various TSIH entities prior to the pandemic from
22 last year and prior to the bankruptcy case. The refunds
23 would be available under New York Law for any team members
24 that were cancelled or where the gym was closed.

25 Presently, Holdings or TSIH still operates five

1 such gyms in New York, but the application of the bond would
2 primarily benefit the debtor which operated approximately 175
3 of the gyms at the time the pandemic struck. And the
4 purchaser of assets of the debtor, who we refer to as new
5 TSI, who purchased approximately 80 locations nationwide and
6 appears to be operating at least 36 in New York currently.

7 Holdings did not make any agreement to pay the
8 obligations of either the debtors or new TSI for canceled
9 memberships or gym closures. In fact, new TSI, as the buyer,
10 expressly assumed those obligations with respect to the
11 locations it purchased under Section 6.2 of the APA.

12 As a result the proposed forfeiture of the bond is
13 a violation of the injunction provisions of the plan and the
14 claims that the New York Attorney General seeks to satisfy
15 against the bond posted by Holdings were released by the plan
16 as confirmed on December 18th, 2020.

17 Your Honor, the motion raises the issue of the
18 factual issues relating to consent or lack thereof for entry
19 of the stipulation which was signed by Donald Derrico of the
20 Gordon Rees Firm on behalf of both the debtor, TSI LLC and
21 Holdings. Attached to the motion is the declaration of
22 Patrick Walsh which also includes four exhibits and they were
23 circulated, again, this morning.

24 For purposes of evidence today we would ask that
25 the declaration of Mr. Walsh be admitted as his testimony.

1 Mr. Walsh, as he is on the Zoom call from his home in
2 Jupiter, Florida, and is available to address any questions.

3 THE COURT: Well I don't see Mr. Walsh.

4 MR. WALSH: Hi. I am here. Can you hear me?

5 THE COURT: Yes. Oh, you're Patrick's iPhone.
6 Okay.

7 Any objection to the submission of the declaration
8 into evidence?

9 MR. MCCALL: Good morning, Your Honor. This is
10 Christopher McCall on behalf of the New York Attorney
11 General.

12 We have no objection to hearing from Mr. Walsh
13 today, but I just want to note that we were first informed of
14 him possibly testifying today at approximately 8:15 this
15 morning. So we do not object to Mr. Walsh being sworn and
16 testifying today. I just wanted to note that for the record.

17 THE COURT: Alright, let me look at something.
18 Hang on, give me a second.

19 (Pause in proceeding)

20 THE COURT: Alright, the declaration is admitted
21 without objection. You're comments are noted for the record.

22 (Declaration of Patrick Walsh received into evidence)

23 THE COURT: Would you like to cross-examine the
24 witness, Mr. McCall?

25 MR. MCCALL: Yes, Your Honor.

1 THE COURT: Ms. Murin, would you swear-in Mr.
2 Walsh, please?

3 THE ECRO: Yes, Your Honor.

4 PATRICK WALSH, DEBTOR WITNESS, SWORN

5 THE ECRO: Please state and spell your name for
6 the record.

7 THE WITNESS: Patrick Walsh, P-A-T-R-I-C-K, W-A-L-
8 S-H.

9 THE ECRO: Thank you.

10 THE COURT: Mr. Walsh, before we get started I
11 have a few questions for you. These actually should have
12 been disclosed in the agenda, but they were not.

13 In any event, where are you located today, sir?

14 THE WITNESS: Jupiter, Florida.

15 THE COURT: Alright, are you in your home?

16 THE WITNESS: Yes, home office.

17 THE COURT: Okay. Are you alone in the room?

18 THE WITNESS: Yes.

19 THE COURT: I am instructing you to remain alone
20 in the room while you testify and, obviously, if we take a
21 break and you move around your house and there are other
22 people that's fine, but when you're testifying you need to be
23 alone in the room.

24 In addition, if you look at any documents in
25 connection with your examination you need to identify for us

1 what you are looking at whether its paper or electronic on
2 the screen in front of you or what have you; we need to know
3 what you are looking at.

4 Finally, I am instructing you not to send or
5 receive any text messages, or emails, or any other kind of
6 electronic device and not to talk to anyone about the
7 substance of your testimony until you are completely done
8 testifying. Okay.

9 THE WITNESS: Yup.

10 THE COURT: Alright. Thank you.

11 Mr. McCall, you may proceed.

12 MR. MCCALL: Good morning. Thank you, Your Honor.

13 Your Honor, I realized that I (indiscernible)
14 applied for admission *pro hac vice* and as of this morning
15 that application had not been ruled upon.

16 THE COURT: I'm happy to have you proceed.

17 MR. MCCALL: Okay. Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. MCCALL:

20 Q Good morning, Mr. Walsh. I am going to ask you some
21 questions today about the declaration you submitted in this
22 proceeding. You are familiar with that declaration?

23 A Yup.

24 Q And do you have that declaration in front of you, Mr.
25 Walsh?

1 A I don't. I can pull it up.

2 Q If you could pull that up that would be helpful because
3 I'm going to ask you some questions about specific
4 paragraphs.

5 A Okay.

6 THE COURT: Let us know when you're ready, Mr.
7 Walsh.

8 THE WITNESS: Yes. Okay. I think I have it.

9 BY MR. MCCALL:

10 Q Okay. If you could turn to Page 3 of your declaration,
11 Mr. Walsh, Paragraph 19. You can see from Paragraph 19 of
12 your declaration that in late February 2021 I informed Gordon
13 Rees that I was retaining Akerman LLP as counsel for all
14 litigation matters including the NYAG action. Do you see
15 that?

16 A I just don't have it up. I don't have the declaration
17 up. So why don't we just go from --

18 THE COURT: You have to be able to look at the
19 document, sir.

20 THE WITNESS: Okay.

21 THE COURT: Mr. Sullivan, if your witness doesn't
22 have the declaration I'm not going to allow it into evidence.
23 He has to be able to be cross examined by the document. You
24 have to have this available for him.

25 MR. SULLIVAN: Your Honor, my understanding was

1 that he did have it available to him yesterday, but I'm going
2 to re-forward it if Your Honor could give me one minute.

3 (Pause in proceeding)

4 MR. SULLIVAN: Mr. D'Angelo, do -- are you able to
5 forward it to him?

6 MR. D'ANGELO: I am. Your Honor, may I forward it
7 to Mr. Walsh?

8 THE COURT: Yes. You may break my rule against
9 looking at emails to (indiscernible) Mr. D'Angelo's email,
10 Mr. Walsh.

11 MR. SULLIVAN: Thank you.

12 (Pause in proceeding)

13 MR. D'ANGELO: Mr. Walsh, you should have it. The
14 motion and your declaration starts on Page 16 of 99 of that
15 document.

16 THE WITNESS: Hold on. Okay. I'm pulling it up.

17 BY MR. MCCALL:

18 Q Let me know when you're on that page, Paragraph 19.

19 THE WITNESS: Massimo, what page did you say of
20 it?

21 MR. D'ANGELO: 15 of 99 of the motion is where
22 your declaration starts. Then it will be Page 3 that Mr.
23 McCall is going to ask you questions about. So it will be
24 Page 19.

25 THE WITNESS: Christopher, what section?

1 MR. MCCALL: On Paragraph 19. Do you see that?

2 THE WITNESS: Yes, I do.

3 BY MR. MCCALL:

4 Q Okay. Paragraph 19 you say that in late February 2021
5 I informed Gordon Rees that I was retaining Akerman LLP as
6 counsel for all litigation matters including the NYAG action.

7 A Yup.

8 Q How did you inform Gordon -- well was there -- who did
9 you speak with at Gordon Rees?

10 A I don't recall, but likely Don Derrico.

11 Q Okay. And was this a conversation or did this take
12 place over email or in letter?

13 A I don't recall.

14 Q Okay. And what do you recall telling Gordon Rees in
15 this conversation or written correspondence?

16 A I don't recall.

17 Q Okay. Well it says in your declaration that you
18 informed Gordon Rees that you were retaining Akerman LLP as
19 counsel for all litigation matters including the NYAG action.
20 Do you remember telling Gordon Rees that?

21 A Yes. I don't remember the specific conversation or
22 email.

23 Q Okay. Did you -- during that conversation or written
24 correspondence did you ask -- did you tell Gordon Rees that
25 it no longer had authority to represent TSI Holdings?

1 A No.

2 Q Did you ask Gordon Rees to withdraw as counsel for TSI
3 Holdings in the New York proceeding?

4 A No.

5 Q Did you, at any time in late February 2021, did you ask
6 for the Akerman law firm to file a notice of appearance in
7 these New York proceedings?

8 A I don't recall.

9 Q At any time in late February 2021 did you ask the
10 Akerman law firm to informally contact the New York Attorney
11 General's Office to inform us that they would be representing
12 TSI Holdings?

13 A I don't recall.

14 Q I just want to clarify that in late February of 2021
15 conversation or written correspondence you did not inform
16 Gordon Rees that it no longer had authority to act on behalf
17 of TSI Holdings. Is that correct?

18 A Yes.

19 Q Okay. And you also did not ask Gordon Rees to withdraw
20 as counsel for TSI Holdings. Is that correct?

21 A That is correct.

22 Q And did you at any time in late February of 2021 ask
23 Akerman or Gordon Rees to file a notice of substitution of
24 counsel in the New York proceeding?

25 A I don't recall.

1 Q And, Mr. Walsh, you said you're not certain if this
2 took place, if this exchange took place in writing or in a
3 conversation. Is that correct?

4 A That is correct.

5 Q To the extent that this did take place in writing we
6 would request copies of all of that correspondence.

7 I now want to turn to --

8 THE COURT: Wait a minute. Wait a minute. Hold
9 on. This is the hearing.

10 MR. MCCALL: Okay. Your Honor, I'm just pointing
11 out that we -- to the extent that there is written evidence
12 supporting TSI Holding's allegations it hasn't been put
13 before the court.

14 THE COURT: Fair enough.

15 BY MR. MCCALL:

16 Q Mr. Walsh, in Paragraph 20 of your declaration -- do
17 you see that in front of you?

18 A Yes.

19 Q Okay. I want to read that,

20 "It is my understanding, from Gordon Rees, that Gordon
21 Rees was going to keep Akerman LLP and myself apprised of all
22 significant developments in all the litigation matters
23 relating to TSI Holdings until Akerman LLP is able to be
24 substituted in as new counsel for TSI Holdings."

25 A Yup.

1 Q Do you see that?

2 A Yes, I do.

3 Q What was the basis for this understanding that you
4 refer to here?

5 A Pretty basic how I would always understand any practice
6 in dealing with my lawyers. They keep you apprised of what
7 is going on.

8 Q So do you mean to say that Gordon Rees told you that
9 Gordon Rees would keep you apprised?

10 A I don't remember any conversation, Chris, in
11 particular. It's just common when I have a lawyer that is in
12 a case they typically will keep you updated if there is
13 anything material going on.

14 Q Okay.

15 THE COURT: Hang on. Mr. Walsh, I'm sorry. This
16 is a court proceeding. You are speaking to Mr. McCall, okay,
17 not Chris.

18 THE WITNESS: Yes, sir.

19 BY MR. MCCALL:

20 Q Mr. Walsh, in Paragraph 22 of your declaration you
21 wrote,

22 "I never signed a stipulation or authorized anyone to
23 sign a stipulation, nor did I ever review the stipulation."

24 Is that correct?

25 A Yes.

1 Q Now, Mr. Walsh, at any time prior to -- well, I guess,
2 when did you -- according to your declaration you first
3 learned of this settlement agreement when you read a news
4 article in the New York Post. Is that correct?

5 A Yeah, it was a press release. It was -- I came across
6 it (indiscernible), I think the post may have been the
7 official -- I'm not a journalist, but I saw it on my computer
8 in a headline.

9 Q Okay. And prior to your seeing that headline had you
10 ever -- had you asked Gordon Rees to withdraw as counsel in
11 the New York proceeding?

12 A No.

13 Q Did you -- prior to your seeing that press release did
14 you inform Gordon Rees that it no longer had the authority to
15 represent TSI Holdings?

16 A No.

17 MR. MCCALL: Your Honor, if you could just give me
18 one moment here.

19 (Pause in proceeding)

20 BY MR. MCCALL:

21 Q Mr. Walsh, prior to your learning of the settlement
22 agreement did you ask the Akerman law firm to file a notice
23 of appearance in the New York case?

24 A I don't recall.

25 Q Prior to your learning about the settlement agreement

1 did you ask the Akerman and/or Gordon Rees law firms to file
2 a substitution of counsel in the New York proceeding?

3 A I don't recall.

4 Q Mr. Walsh, are you aware that your counsel at Akerman
5 informed our office that it would resolve this objection if
6 our office --

7 THE COURT: Whoa, whoa, whoa; I don't want to hear
8 anything about settlement discussions.

9 MR. MCCALL: Okay. Your Honor, I don't think that
10 I have any further questions at this time. We would submit
11 that given Mr. Walsh's testimony that he didn't ask for a
12 release or withdraw and that he didn't inform that they lack
13 the authority to represent TSI Holdings we believe that under
14 New York and Delaware Law that satisfies -- that TSI Holdings
15 has failed to meet its burden to demonstrate that Gordon Rees
16 lacked authority to enter the settlement agreement.

17 THE COURT: Thank you, Mr. McCall.

18 Does anyone else wish to cross-examine Mr. Walsh?

19 (No verbal response)

20 THE COURT: Alright, any redirect, Mr. Sullivan?

21 MR. SULLIVAN: Your Honor, yes. I would -- yes,
22 please.

23 THE COURT: Okay. You may proceed.

24 REDIRECT EXAMINATION

25 BY MR. SULLIVAN:

1 Q Mr. Walsh, this is Bill Sullivan.

2 Did you have any conversations with anyone from Gordon
3 Rees in 2021 regarding settlement of the New York action?

4 A No, not that I recall.

5 Q Would you have expected to have a conversation with a
6 lawyer at Gordon Rees if the New York action was going to be
7 settled on behalf of TSI Holdings?

8 A Yes, of course. I thought I would be made aware that
9 there would be a settlement that would affect the company I'm
10 involved with.

11 Q Is anyone else at TSI Holdings someone who would
12 communicate with Gordon Rees instead of you?

13 A No.

14 Q Did anyone else at TSI Holdings communicate with Gordon
15 Rees with respect to this New York action?

16 A No, not that I'm aware of.

17 Q And when you found out about the press release what did
18 you do?

19 A I believe I sent it to Massimo and asked him to explain
20 it me what happened, what it was.

21 Q You're referring to Mr. D'Angelo from the Akerman Firm?

22 A Yes, sorry. Mr. D'Angelo.

23 Q Okay. And has he been made aware of the settlement
24 that was filed with the New York Attorney General's Office?

25 A I do not believe so, no.

1 Q Well did he tell you that he was or it wasn't? Did he
2 tell you either way?

3 A He was not. He's not aware.

4 Q And what role, if any, was he playing with respect to
5 the various matters of dealing with Holdings?

6 A Mr. D'Angelo?

7 Q Yes.

8 A He's been engaged in all different types of matters for
9 the company, different types of litigation ranging from
10 various different litigations.

11 MR. SULLIVAN: No further questions, Your Honor.

12 THE COURT: Okay. Thank you.

13 Mr. Walsh, your testimony is completed. Thank
14 you. You can now recommunicate with the electronic world
15 (indiscernible).

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 (Witness excused)

19 THE COURT: Mr. Sullivan, any further evidence?

20 MR. SULLIVAN: No, Your Honor. We had -- I had
21 indicated, I think, that Mr. D'Angelo would be available to
22 discuss matters that were raised in the McCall declaration,
23 but Your Honor has indicated that he doesn't want to hear
24 anything about the settlement discussions so, therefore, I
25 don't believe Mr. D'Angelo would be necessary to address

1 those.

2 THE COURT: Okay.

3 MR. SULLIVAN: With respect to the McCall
4 declaration I believe that those discussions are in Paragraph
5 16 and I would ask that that be struck.

6 THE COURT: It's not in evidence yet. So let's
7 see what happens with that.

8 MR. SULLIVAN: Okay. I guess I'm getting ahead of
9 myself.

10 THE COURT: It's okay. So that's your case?

11 MR. SULLIVAN: Yes.

12 THE COURT: Very good.

13 Mr. McCall, would you like to present any
14 evidence?

15 MR. MCCALL: Yes, Your Honor.

16 Your Honor, if I could first just address Your
17 Honor's statement earlier about settlement discussions. Just
18 to state that our position is that these weren't settlement
19 discussions. When I was contacted by the Akerman law firm,
20 which I had never dealt with, they hadn't appeared in the
21 case and the case was settled it's hard to understand how
22 those are -- how that conversation is inadmissible settlement
23 discussions when the case had been settled and --

24 THE COURT: Well in their mind the case hadn't
25 been settled. In their mind, at least, potentially it was

1 (indiscernible) without their authority. Your position is it
2 was apparent authority. But there was a dispute, so you
3 started your question with did -- were you aware that your
4 lawyer offered to resolve the issue by X and I cut you off.
5 If that's not a settlement offer I don't know what is.

6 MR. MCCALL: Understood, Your Honor.

7 Your Honor, could I ask would it matter if the
8 substance was contained in a letter from Akerman to Gordon
9 Rees?

10 THE COURT: No, because there's a potential
11 lawsuit here. I mean this is where this is headed to be
12 frank. There's a potential law suit here between Holdings
13 and Gordon Rees. So they're in conflict.

14 MR. MCCALL: Understood, Your Honor.

15 I guess if the proper procedure is for the NYAG to
16 move for its admission of my declaration then we so move.

17 THE COURT: Any objection?

18 MR. SULLIVAN: Your Honor, Bill Sullivan. I renew
19 the objection to Paragraph 16.

20 THE COURT: Okay. Let me pull that up. Read it
21 without reading it.

22 Any response to striking Paragraph 16, Mr. McCall?

23 MR. MCCALL: No. I would just reiterate what I
24 said previously and Your Honor stated the court's position.

25 THE COURT: Alright, it's admitted except for

1 Paragraph 16.

2 (Declaration of Christopher McCall received into
3 evidence)

4 THE COURT: What about the exhibits. Are they --
5 any objection, Mr. Sullivan, to the exhibits?

6 MR. SULLIVAN: No, Your Honor.

7 THE COURT: Alright, they're admitted as well;
8 Exhibits 1 through 26 just to be clear.

9 (McCall declaration exhibits received into evidence)

10 THE COURT: I'll hear argument.

11 Mr. Sullivan?

12 MR. SULLIVAN: Thank you, Your Honor. Bill
13 Sullivan on behalf of TSI Holdings.

14 Your Honor, there is not a dispute here that TSI
15 Holdings was a release party under the plan as an affiliate
16 and equity holder of the debtor. There is also not a dispute
17 that the solicitation process included an opt-out mechanism
18 for parties to opt-out of those releases. Several attorney
19 general offices did that, but the New York Attorney General's
20 Office did not do that. As a result, and because of the
21 releases, any action to liquidate the bond posted by TSI was
22 to satisfy claims against it in the New York actions *void ab*
23 *initio* as a violation of the injunction provisions of the
24 plan.

25 The reality is that there are several avenues of

1 recovery available to the New York Attorney General. There
2 is recovery available through the plan. There is also
3 recovery available from new TSI who assumed responsibility
4 for membership rated claims related to the locations where it
5 acquired -- that it acquired through the sale.

6 The settlement at issue here that allows the
7 attorney general to liquidate the bond and pay the claims
8 that others are responsible for is, in fact, an act to
9 liquidate claims against a release party. The primary
10 response from the Attorney General's Office is that at all
11 times when Mr. Derrico represented TSI Holdings and TSI LLC,
12 the debtor, jointly in the New York action that at all times
13 relevant he had the authority to bind Holdings to the
14 settlement.

15 There are two areas of authority that have been
16 addressed in the papers. One is the actual authority and one
17 is the apparent authority. I think at this point it's
18 undisputed that there is no actual authority. Mr. Walsh was
19 not aware of the settlement. It was never presented to him
20 and he acted swiftly as soon as he saw that the matter had
21 been settled to address the fact that he had not been
22 advised.

23 You know, frankly, it may have -- I guess we don't
24 have information as to why Gordon Rees would have purported
25 to sign on behalf of TSI Holdings. The statement submitted

1 by the debtor with respect to this motion indicates that
2 Gordon Rees was representing it, that Gordon Rees presented
3 the stipulation to the plan administrator, and the plan
4 administrator approved the stipulation; not surprisingly
5 because it didn't require any consideration from the debtor
6 to the plan. That is a clear distinction from how the matter
7 was handled with respect to TSI Holdings who got no notice
8 and no opportunity to comment on the settlement and
9 stipulation.

10 There's reference in the papers to the fact that
11 there may have been some agreement back in October of 2020
12 before the sale had occurred, before the plan was confirmed,
13 but given the considerations, Your Honor, frankly, those -- I
14 think it's impossible to say that any authority on some
15 tentative resolution in October can't carry through to an
16 actual stipulation in February given the changed
17 circumstances.

18 So, you know, the last question, the questions by
19 Mr. McCall, go to the apparent authority that as far as they
20 were concerned and Mr. Rees still had -- or appeared to them
21 to have authority at all times to enter into the settlement
22 agreement. Your Honor, I would say two things about that.

23 Number one, you know, from the record submitted in
24 the papers there wasn't anything happening in the case. The
25 case had been continued and static since before plan

1 confirmation. So I am not sure that much can be drawn from
2 the fact that there wasn't, you know, an attempt to
3 immediately replace Gordon Rees with the Akerman Firm
4 because, you know, it simply was a case that there was no
5 activity up until there was a settlement that lacked Holdings
6 consent.

7 The second thing is with respect to the parent
8 authority. The actual part of the settlement has not occurred
9 yet, that is the liquidating and the bond. So, you know, I
10 think this is a situation where because the lack of authority
11 issue emerged immediately and there is nothing to unwind here
12 that the parent authority argument should hold.

13 Your Honor, the bottom line is that while this
14 deal may have been good for the debtor and the debtor
15 approved it, and that the consent and stipulation simply has
16 Mr. Derrico signing on behalf of all defendants doesn't
17 distinguish between the debtor and TSI Holdings. The reality
18 is there isn't authority for that settlement from Holdings.
19 It impacts Holdings property for the benefit of others in
20 violation of a plan. And, Your Honor, this court should
21 enforce those provisions to prevent the liquidation of the
22 bonds to satisfy the various claims.

23 THE COURT: Thank you, Mr. Sullivan.

24 Mr. McCall?

25 MR. MCCALL: Yes. Thank you, Your Honor.

1 Your Honor, a couple of things in response.
2 First, as to Mr. Sullivan's argument that the courts December
3 confirmation order, you know, negated or voided a New York
4 proceeding or ongoing settlement discussions or ongoing --
5 the ultimate settlement agreement, we think that argument is
6 undermined by the statement filed by the debtor in this case
7 which makes clear that the settlement agreement was properly
8 reviewed and approved by the debtors, and that, you know,
9 implicitly that rights under the confirmation order can be
10 voluntarily waived which we believe is what happened in this
11 case that to the extent that TSI Holdings, the none-debtor,
12 (indiscernible) under the confirmation order it voluntarily
13 waived them.

14 I also want to respond to what Mr. Sullivan said
15 that "there wasn't anything happening in the case" from the
16 time period when the confirmation order was entered until the
17 settlement agreement was filed. That simply is not the case.

18 In January of 2021 and in February of 2021 the
19 parties filed stipulations with the court that extended the
20 terms of the temporary restraining order among other things.
21 So it isn't the case that Mr. Sullivan is portraying these as
22 ministerial documents resetting hearing dates, they had a
23 substantive -- they substantively limited TSI Holdings and
24 TSI LLC's ability to charge certain consumers. These
25 stipulations which, again, were publicly filed in open court

1 also made clear that the parties were engaged in ongoing
2 settlement discussions.

3 I also want to point out that Mr. Sullivan
4 referred earlier to an October 2020 email exchange between
5 Mr. Walsh and Gordon Rees in which Mister -- in which Gordon
6 Rees described the settlement agreement as the only
7 consideration being the TSI bond, and Mr. Walsh respond to
8 congratulate Gordon Rees. It is true that that was a
9 preliminary version of the settlement agreement, but the
10 substantive terms remains the same that the \$255,000 bond was
11 the only consideration and, again, there was no -- there were
12 no individuals included in the release provision and it was
13 never raised at any point in the proceeding.

14 I also want to point out that the equitable
15 argument that we raised, Your Honor, which is that, you know,
16 if TSI Holdings is correct that Gordon Rees acted improperly
17 here we think as between the people of the state of New York
18 and TSI Holdings that TSI Holdings should bear the
19 consequence of Gordon Rees's alleged misconduct if there was
20 any.

21 We would note in that regard, you know, that TSI
22 Holdings has a number of options available to it. It could
23 move to vacate the settlement agreement in the New York Court
24 and it could also file suit against Gordon Rees for money
25 damages. We don't think under the circumstances, given that

1 it's absolutely undisputed that we had no idea of any of this
2 dispute until after the settlement agreement was filed, we
3 don't think that that fairness should allow TSI Holdings to
4 walk away from the settlement agreement and leaving, you
5 know, our office with few options.

6 THE COURT: Thank you very much.

7 Mr. Sullivan, brief reply if you wish.

8 MR. SULLIVAN: Thank you, Your Honor, yes. Bill
9 Sullivan on behalf of TSI Holdings.

10 Your Honor, the waiver argument doesn't work
11 because waiver is a voluntary relinquishment of a known
12 right. And the issue of this case is that TSI Holdings had
13 no idea that a settlement was being approved or submitted
14 post-confirmation of the plan. That also goes to the
15 argument from the New York Attorney General's Office about
16 the activity in January and February of 2021.

17 Your Honor, the exhibits that were attached to the
18 McCall declaration that we reviewed indicated, as far as we
19 could tell, that the monthly stipulations were simply kicking
20 out the deadlines as they had from back in October. So it
21 wasn't a sign that -- it's not apparent, from those
22 stipulations, that that involved significant discussions.

23 To the extent that there were significant
24 settlement discussions, again, it's a real problem from
25 Holdings point of view because nobody informed TSI Holdings

1 about those discussions at any time in January or February up
2 to the submission of the stipulation. So, Your Honor, the --
3 I don't think the record is disputed that as to Holdings it
4 was completely unaware that this stipulation was going to be
5 entered.

6 And then as to the argument that other avenues of
7 relief are available, Your Honor, I would say that that sort
8 of relates to the argument as to apparent authority. There
9 hasn't been any reliance here at this point. The stipulation
10 as submitted. It hit the docket, (indiscernible), and the
11 press release was issued, the parties conferred and said we
12 don't know anything about that. So we're not to appoint
13 where the, you know, law would say tough luck, we'll sue them
14 because there hasn't been an implementation.

15 So that is the reason why we believe Your Honor
16 should enforce the plan provisions.

17 MR. MCCALL: Your Honor, may I just have one
18 minute to respond very quickly?

19 THE COURT: Yes.

20 MR. MCCALL: I just want to point out -- so,
21 again, it was referred to the court that stipulations had
22 been filed and are part of the record in the case. They were
23 not ministerial picking out dates. Again, they extended the
24 terms of the temporary restraining order.

25 I also think under -- you know, based on the cases

1 cited in our objections that Mr. Walsh's testimony is
2 insufficient to meet TSI Holdings burden and his inability to
3 recall anything specific about the conversations. I
4 (indiscernible) credibility in doubt and I just want to
5 reiterate that the arguments that TSI Holdings is making
6 (indiscernible).

7 We're hearing for the first time their arguments
8 about the bonds, and subrogation rights, and things of that
9 nature. All of those could have and should have been raised
10 in the New York proceeding, and they weren't, and ultimately
11 that case settled for a bond that we think is not part of the
12 bankruptcy estate.

13 THE COURT: Thank you, Mr. McCall.

14 Alright, I'm going to deny the motion. You're in
15 the wrong court. This has nothing to do with the confirmation
16 order or the release provisions with one proviso. So you can
17 grant a release, you can have a confirmation order with an
18 injunction, but a party that is a beneficiary of that release
19 or injunction can raise that. That happens.

20 What purportedly happened here is that a lawyer
21 that had entered an appearance and was appearing on behalf of
22 Holdings signed a stipulation waiving, in effect, that
23 release. Whether that was authorized or was due to apparent
24 authority and is, thus, binding, really isn't my issue. The
25 issue -- that is an issue for the court in New York.

1 If you have a problem with the settlement
2 agreement based on lack of authority or lack of apparent
3 authority take it up with the court that signed the order.
4 Now if that court decides that, yes, this was not an agreed
5 settlement, there was insufficient apparent authority, there
6 wasn't actual authority, there is no settlement agreement
7 here, and New York were to try to enforce it anyway that is
8 when I get a call. That is when you have a situation where
9 you actually have a violation of the confirmation order and
10 the releases.

11 Right now you don't because right now, at least,
12 on its face, as far as I'm concerned, unless you prove
13 otherwise, there is a signed settlement agreement that
14 Holdings is a party to, that is binding on Holdings, that
15 waves its rights under the confirmation order and the release
16 provisions. So if you have a problem with that that's fine,
17 you got to take it up with the New York Court.

18 If you lose there I agree with Mr. McCall, you
19 might have various remedies. One is to come back and prevent
20 the settlement from, sort of, being enforced on you when
21 there's a court order that says, (A) you released it, and (B)
22 there's a separate court order that says you haven't agreed
23 to waive that release then you come back to me, or if the
24 judge in New York holds you to the settlement sue Gordon Rees
25 for acting beyond its authority. Nobody likes to do that,

1 that's not a great result, but those are your options.

2 The option to come to me to enforce a confirmation
3 order and the release provisions where the record indicates
4 that an agent released those protections when you haven't
5 proved otherwise or undone that release in the State Court
6 where that purported happened it's premature to be here. So
7 I'm going to deny the motion.

8 Mr. Greecher.

9 MR. SULLIVAN: Thank you, Your Honor.

10 THE COURT: Put out another order denying it for
11 the reasons I put on the record.

12 Mr. Greecher, sorry.

13 MR. GREECHER: Your Honor, I think the next matter
14 up is a motion filed by (indiscernible) with respect to
15 access to documents that are in the custody of the buyer.
16 Mr. Lichtenstein is going to handle that.

17 THE COURT: Okay.

18 MR. LICHTENSTEIN: Thank you, Mr. Greecher. Good
19 morning, Judge Sontchi. It's nice to see you.

20 We're here this morning on the motion for turnover
21 of certain critical documents that Holdings, Inc., needs to
22 conduct its business including SEC reporting and tax returns.
23 As Your Honor may have seen in the moving papers the debtor,
24 who effectively pre-sale shared documents on an Oracle
25 database which were intertwined with Holdings, Inc., supports

1 the motion in so far as (indiscernible) that the documents
2 get turned over directly to Holdings.

3 Notably, and we conferred with Mr. Greecher before
4 filing the papers, the implementation of the turnover he's
5 taking no position with respect to some of the arguments
6 about how it was to be done in an equitable, and appropriate,
7 and non-invasive manner. Generally, the debtor with whom we
8 have privity and whose rights were derivative of, under the
9 sale order, specifically a definition of excluded assets in
10 the sale order and the provisions of 6.2 and 2.8 of the sale
11 order which, of course, on Page 4 of our motion.

12 Then in our reply give rise to an obligation by
13 the buyer to either deliver to the debtor certain excluded
14 assets at their own expense, but also to the extent documents
15 are needed by the debtor and a priority needed by Holdings
16 which Holdings is the consolidated reporting entity and all
17 the affairs were inseparable that proper payments by the
18 debtor, in this case Holdings, those documents would be
19 produced.

20 Afterwards, Your Honor, without getting into
21 settlement discussions because I'm mindful of your prior
22 admonition, although perhaps it might be relevant because it
23 was the buyer who opened the door, but I will
24 (indiscernible), Your Honor, but we may not have to even go
25 there.

1 Efforts were made prior to filing this motion to
2 establish a protocol for the turnover of those documents and
3 the access to certain employees of new TSI. And the sessions
4 ensued and on new TSI stated certain preconditions for
5 turnover, three of which are (indiscernible) and then
6 actually agreed to even before the opposition was filed. The
7 (indiscernible) and we don't need to get into that for
8 purposes of this matter unless Your Honor deems it
9 appropriate.

10 At the end of the day it seems to me not to be a
11 dispute over we don't want to do this; although, new TSI does
12 allege some jurisdictional arguments and a possessory lien
13 and other sorts of, what we portray in our reply as sort of,
14 unnecessarily obstructed behavior. We think at the end of
15 the day it comes down to new TSI doesn't want its business to
16 be interrupted unduly by a document turnover protocol or
17 access to its people for (indiscernible) questions. We get
18 that.

19 So (indiscernible) initially, sort of, in a
20 perfect world access to twelve of their employees for
21 questions, not for work product, but merely, Your Honor, for
22 questions. We dialed that back to only four. We took their
23 points that we could get some of this information from third-
24 party sources and we're certainly willing to do that.

25 We significantly scaled down our asks to just talk

1 about the Oracle database, the (indiscernible) and the motion
2 environments where we would just get access through August
3 15th. We don't see this as a (indiscernible). We deem it as
4 next year. We just want to get our reporting and tax returns
5 and stuff done.

6 Now if there are matters after that we would agree
7 to do it on a very limited basis with a lot of advance
8 notice. And we will pay for everything that we -- every
9 service that we obtained. In fact, we have agreed to put up
10 a retainer and make it (indiscernible) to the extent we need
11 more assistance from the new TSI.

12 As our exhibit to our reply we tried to
13 (indiscernible) with our outside accounting experts to the
14 lease that we would really need and, frankly, Your Honor,
15 it's not that much of an ask given the fact that the debtor
16 has these rights under the sale order. It was the one that
17 routinely shared documents. Unfortunately, because of the
18 way things are organized, the entire Oracle database is now
19 turned over to new TSI and we're sort of being a little rough
20 about it in terms of leverage you get or other consideration;
21 possessory lien for all the, sort of, alleged obligations and
22 other things that are really making life very difficult for
23 us.

24 Holdings needed these documents yesterday. We're
25 under immense pressure, as you can imagine, Your Honor, in

1 the public reporting company and its tax time now. And we
2 never anticipated, unfortunately, perhaps, this situation,
3 but as Your Honor well knows in lots of cases involving 363
4 sales this is, sort of, very common to talk about
5 transitional document access and transitional
6 responsibilities on each side as long as it's fair.

7 And so it's, frankly, a bit disheartening that we
8 had to bring this before Your Honor because this seemed to be
9 the kind of thing that could settle without your judicial
10 intervention. That being said, (indiscernible) as you can
11 tell in our papers, you know, we know all about compromising
12 and cooperating because our need for the documents is so
13 incredibly urgent.

14 It's of a critical importance and threatens the
15 company with irreparable harm by virtue of interruption of
16 the business, but also more importantly issues with our
17 lenders, issues with the SEC, issues with the taxing
18 authorities and respectfully submit, Your Honor, that given
19 the rights under the sale order that, essentially, are
20 derivative of the debtors' rights, the debtors support, as I
21 indicated, the motion.

22 The fact that we are willing to (indiscernible)
23 work to ameliorate any undue burden or allegations of undue
24 burden by new TSI we would respectfully request that Your
25 Honor direct the turnover and to the extent necessary try to

1 bring the parties together to a protocol for the turnover.

2 Finally, Your Honor, what we would propose in
3 order to alleviate any concerns of sharp play by new TSI and
4 Holdings for that matter after the fact would create some
5 paranoia or discomfort that Mr. DiDonato has been very
6 constructive and a force for resolution here. We appreciate
7 it. He be a point of contact since the debtors and Holdings
8 actually have the privity and share the documents, but he and
9 his team be the first point of contact for any disputes or
10 difficulty and only after a process ensues for Mr. DiDonato
11 and (indiscernible) would we, as a last resort, come back to
12 Your Honor --

13 THE COURT: I'm sorry, you're asking me to enforce
14 this protocol you proposed?

15 MR. LICHTENSTEIN: Your Honor, not exactly. Not
16 enforce the protocol. We're asking Your Honor to rule that
17 the documents -- that we must -- we haven't gotten access to
18 the documents under reasonable and appropriate matters. We,
19 obviously, think our protocol is very fair and appropriate.

20 We're not asking you, Your Honor, to specifically
21 line by line issue this protocol, but we do need some
22 judicial (indiscernible) to force the parties together
23 because right now we're at a very damaging stalemate although
24 we felt like things were very promising and we've given in on
25 three of the four conditions not permitted to what they are

1 specifically. And we are even open to a fourth one on some
2 basis, but, frankly, new TSI indicated to us that unless we
3 withdrew this motion they won't even engage with us anymore.

4 THE COURT: What is wrong with you people? I
5 don't want to hear that. Stop.

6 Response?

7 MR. CHUBAK: Your Honor, this is Jeffrey Chubak
8 from Amini LLC on behalf of new TSI, the purchaser under the
9 asset purchase agreement.

10 I am not going to get into settlement discussions
11 except to say that there has -- I know (indiscernible) motion
12 was brought and that we've made a proposal to turn over the
13 Oracle database. We stand by the statements and objections
14 that the (indiscernible) payment of severance to NewCo's CFO.

15 THE COURT: You know what, the next person that
16 tells me what the discussions were between the parties will
17 be sanctioned. I don't want to hear it. That is the fourth
18 time that I have said that on this hearing.

19 MR. CHUBAK: We have made --

20 THE COURT: You've been in settlement
21 negotiations. You have been unable to reach a resolution and
22 now you're in front of me, fine. That is what always
23 happens. Deal with the merits.

24 MR. CHUBAK: Okay. Mr. Lichtenstein has said that
25 the debtor supports the motion. Mr. Greecher can speak for

1 himself. We have been advised that the debtor
2 (indiscernible). TSIH has stated that it is seeking to
3 enforce the asset purchase agreement. It is not a party to
4 nor a third-party beneficiary of the asset purchase
5 agreement. Furthermore, it's perhaps a little too cute
6 because it wants to be able to enforce the asset purchase
7 agreement, but doesn't want to be bound by the non-solicit
8 provisions at Section 6.7(b).

9 We admit that TSIH doesn't even have the right to
10 be heard under (indiscernible) and that subject matter
11 jurisdiction is lacking. No response to that argument was
12 made in the reply. And, finally, TSIH -- the only other
13 basis for the relief sought is the turnover provision that
14 Bankruptcy Code Section 542. Those can only be asserted by a
15 trustee. It is undisputed that TSIH is not a trustee or
16 anyone standing in the shoes of the trustee, as mentioned
17 before, and is not even a party of interest in this case.

18 We submitted a declaration of Nitin Ajmera in
19 support of the motion. He is on the line. We request that
20 it be admitted into evidence.

21 Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Any objection to the admission of Mr. Ajmera's
24 declaration?

25 MR. LICHTENSTEIN: No, Your Honor. That's fine.

1 THE COURT: Okay. It's admitted.

2 (Declaration of Nitin Ajmera received into evidence)

3 THE COURT: Would you like to cross-examine him?

4 MR. LICHTENSTEIN: No, Your Honor.

5 THE COURT: Mr. Greecher, what is the debtors'
6 position?

7 MR. GREECHER: Thank you, Your Honor.

8 I feel like we're in the middle of a dispute that
9 we've been trying to help the parties resolve, but they're
10 unresolved. And unfortunately the debtors don't have the
11 documents. As indicated, the documents requested are part of
12 the Oracle server. That is part of the asset purchase
13 agreement.

14 We, the debtors, the plan administrator does not
15 presently (indiscernible) records. We don't take any
16 position with respect to where any specific items
17 (indiscernible) excluded assets. As Holdings motion ordered
18 we (indiscernible) motions and we're in support of the motion
19 for what we think is the non-controversial position that the
20 buyer did not purchase and inquire excluded assets as part of
21 the sale.

22 Outside of that, Your Honor, the plan
23 administrator has no position because the (indiscernible) not
24 need the documents as TSIH.

25 THE COURT: Thank you, Mr. Greecher.

1 Mr. Lichtenstein, any response?

2 MR. LICHTENSTEIN: Yes, Your Honor.

3 First of all, apologies to the court. It was my
4 intent not to get into anything. I apologize for that.

5 With respect to the relief sought, Your Honor, we
6 point out that because of the nature of the way the group's
7 records, and accounting, and SEC filings are done that the
8 debtors and the Holdings Inc., books and records are
9 inseparable. So because of the -- I don't think it benefits
10 Your Honor for me to read into the record the definition of
11 excluded assets or the provisions in the sale order that give
12 the debtor rights to these very important excluded assets.

13 Because the debtors are in liquidation mode the
14 entity, the entity desperately would have access to these
15 books and records which are Holdings books and records is
16 Holdings. So unless the matter is resolved consensually,
17 which as Your Honor noted has not yet occurred, or Your Honor
18 provides a court order directing the parties to cooperate in
19 a turnover since we are the (indiscernible) as Mr. Greecher
20 acknowledged, Holdings is a true party in interest here that
21 means we are really in a terrible stalemate and I can see us
22 flailing around in State Court for a very long time.

23 That is one of the -- I know it's another
24 imposition on your post-confirmation jurisdiction, but we're
25 here to help our (indiscernible) be the catalyst to bring the

1 parties together and respectfully, all of the technical
2 (indiscernible) are our adversary really speak to a situation
3 where we're just a stranger to the transaction and have
4 nothing to do with anything that we're not a party in
5 interest, but we would indicate its very clear that because
6 of our inextricably intertwined previous relationship with
7 the debtors that we are very much a (indiscernible) invested
8 party here before Your Honor and appropriately are seeking
9 the assistance of the court in resolving the stalemate in a
10 fair and equitable matter.

11 We do not want to see proprietary information from
12 new TSI. We don't want to put new TSI and its people through
13 the ringer and create a very difficult situation for them as
14 they integrate their businesses and move forward. That is
15 why, in our papers, we indicated the various reasonable
16 nature of our approach.

17 THE COURT: Okay. Thank you. Thank you very
18 much.

19 I am going to take the matter under advisement,
20 but I will rule very shortly in the form of an order. I want
21 to go back and trace through the documents a little more
22 carefully, frankly, given, you know, the argument that has
23 been made this morning. So you will get a decision before
24 May 17th which I think is the tax deadline, but you will get
25 a decision as soon as possible and it won't be an opinion or

1 anything. It will be an order and I will get on that as
2 quickly as I can.

3 Anything else for today?

4 MR. GREECHER: Nothing else from the
5 administrator, Your Honor. Thank you.

6 THE COURT: Alright, we are adjourned. Have a
7 great day.

8 (Proceedings concluded at 11:11 a.m.)
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CERTIFICATE

12

13 I certify that the foregoing is a correct transcript from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.

16

17 /s/Mary Zajackowski
Mary Zajackowski, CET**D-531

April 20, 2021

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